UNITED NATIONS

ECONOMIC AND SOCIAL COUNCIL

Distr.
GENERAL

E/CONF.88/4
1 September 1994

ORIGINAL: ENGLISH

WORLD MINISTERIAL CONFERENCE ON
ORGANIZED TRANSNATIONAL CRIME
Naples, 21-23 November 1994
Item 6 of the provisional agenda*

MOST EFFECTIVE FORMS OF INTERNATIONAL COOPERATION FOR THE PREVENTION AND CONTROL OF ORGANIZED TRANSNATIONAL CRIME AT THE INVESTIGATIVE, PROSECUTORIAL AND JUDICIAL LEVELS

Background document

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*E/CONF.88/1.

V.94-25822T

INTRODUCTION

1. As organized crime has long since crossed national borders to become a highly transnational phenomenon, the response to it should also be transnational if it is to be at all effective. Although the degree of international cooperation in response to transnational crime has increased significantly in the last 20 years, there are still many gaps in patterns of cooperation that can be exploited by the criminals - especially those who belong to highly sophisticated and adaptable transnational criminal organizations. These organizations pose a formidable threat to States, which can be contained only if those States cooperate even more closely.

2. Against this background, the present report identifies the major forms of international cooperation that have already been developed and suggests ways of further enhancing cooperative strategies and mechanisms. The report focuses on arrangements at the operational level, more than at the policy level. First, though, the rationale for cooperation is defined. This is shown to be both compelling and multifaceted; yet there are still powerful obstacles and inhibitions that stand in the way of cooperation. If these are to be overcome, it is important that certain principles of cooperation be observed. Having identified these principles, the discussion focuses on various kinds of cooperation. Informal modalities of cooperation, such as personnel and information exchanges, as well as various types of assistance in both the investigation and prosecution of transnational organized crime, are examined. Consideration is also given to more formal modalities of cooperation, and particular attention is paid to efforts to bring criminals to justice via the process of extradition and the provision of evidence through mutual assistance. While all these methods of cooperation are important, major initiatives need to be taken at the political level to generate awareness of the threat and of the sustained cooperation necessary to counter it.

I. THE RATIONALE FOR COOPERATION

3. The rationale for international cooperation to deal with transnational criminal organizations is very powerful. These organizations are not only becoming stronger and more diverse but they are engaging more and more frequently in systematic forms of cooperation designed to further their criminal activities, extend the reach of illicit markets and expand their capacity to infiltrate legitimate business. Their enhanced mobility and their capacity to exploit licit commerce for concealment, and to use the global banking system for accumulating, moving and laundering the proceeds of their crimes, make it extremely difficult for any single Government, no matter what means and resources it has at its disposal, to develop an adequate response without some form of international cooperation. Indeed, the inability of any Government acting alone to make major inroads on criminal organizations that operate transnationally is the single most important factor underlying the need for international cooperation. In fact, global conglomerates dealing in illicit activities survive and flourish because unilateral enforcement efforts by a single country generally disable only small segments of such operations.[1] In other words, host nations may be able to do something about the branch office or local franchise but find it much more difficult to reach the corporate headquarters, especially as most transnational criminal organizations operate from a safe haven in home bases in which criminal justice systems are weaker. Moreover, these organizations profit from the lack of homogeneity of national countermeasures and have proved capable of adapting themselves to the different national settings and law enforcement obstacles by choosing the activities they can carry out more easily in different countries and by always being quick to transfer their activities to other countries when national countermeasures become more efficient.

4. Even when efforts are made to compensate for the weaknesses of the domestic system, through extradition and subsequent prosecution in other countries, criminals use nationalism and sovereignty as defensive symbols against extradition efforts. Consequently, extensive cooperation with, and assistance

to, countries that are having the most difficult problems and, consequently, may be used as sanctuaries or safe havens, remain essential.

5. International cooperation is not only an essential condition for controlling transnational crime and dismantling the organizations that engage in it but it is also important as a preventive measure. There must be universal awareness of the fact that no country is immune to the challenges posed by transnational criminal organizations. Even if they are not in the immediate line of fire, as trafficking needs change or new market opportunities arise, particular countries might find themselves involuntarily acting as transit nations or new host nations for criminal organizations. In fact, if transnational criminal organizations find one nation becoming less hospitable as a result of more vigorous and effective suppression activities, some of their members may simply move their base of operations elsewhere. It is essential, therefore, to strengthen the States with weaker criminal justice and law enforcement systems. Indeed, to maximize law enforcement risks for transnational criminal organizations, international cooperation should produce a more resilient and uniform law enforcement environment that makes it much more difficult for them to continue to operate with impunity in certain countries, to infiltrate others by relocating their operations and to move their profits through the global financial system.

6. The challenge posed by transnational organized crime can only be met if law enforcement authorities are able to display the same ingenuity and innovation, organizational flexibility and cooperation that characterize the criminal organizations themselves. They have to be not only as flexible as the organizations they are trying to combat, but as adaptable and sophisticated as well. In particular, to be successful, they will have to be more innovative in their use of existing and new bilateral and multilateral legal mechanisms, and action at the country level will have to be more uniform or homogeneous, so that law enforcement officials can display the same mobility and efficiency as the criminals themselves.[2] Moreover, in addition to the transnationality and adaptability of organized criminal groups, increasing cooperation between them, especially through a growing but still relatively small number of agreements, has highlighted the inadequacies in the fight against organized crime. New agreements and new judicial measures and instruments are therefore needed, which could involve the whole international community.[3]

7. Law enforcement cooperation should endeavour, inter alia, to achieve the following goals:

(a) To identify and immobilize the criminal; this will involve "identifying individuals who engage in criminal activity, finding and arresting them, gathering the evidence necessary to indict and convict them, and finally imprisoning them";[4]

(b) To disrupt the activities of transnational criminal organizations, which entails making it more difficult for these organizations to operate with impunity and to use safe havens: one response to the safe haven problem might be to seek rendition and prosecution in countries where the criminal justice system is more effective;

(c) To deprive the criminal organizations of assets obtained through illicit activities, by means of seizure and forfeiture of assets: this is one of the most important strategies that can be used against transnational organized crime, as it limits their opportunities to reinvest in legitimate business and to engage in bribery and corruption;[5]

(d) To dismantle the criminal organizations themselves: as transnational criminal organizations have a ready source of manpower. Even if a few high-level individual members of the group are incarcerated, there are usually others who can replace them, so unless the organization itself is placed at risk, law enforcement action may simply create a more rapid turnover and greater promotion opportunities within the criminal group.

8. To achieve these strategic goals, cooperation is essential, as evidenced by the recent patterns of cooperation among law enforcement authorities, which have become stronger and more pronounced. Nevertheless, many countries still have a long way to go before they can achieve the kind of comprehensive cooperation necessary to deal with the formidable array of transnational criminal organizations and activities. Countries should base their countermeasures upon effective organizational and management techniques and, like organized crime itself, should take advantage of technological advances as a strategic defence against vulnerability. The development of frameworks are therefore essential for inter-State cooperation aimed at building a strong collaborative global infrastructure, more effective cooperative mechanisms.

II. FACTORS INHIBITING COOPERATION

9. The agenda for international cooperation itself may become more clear if existing obstacles to the establishment of an infrastructure are identified. In fact, in spite of the imperatives for cooperation, criminal law has long been not only a matter of national jurisdiction but also one of the main expressions of national sovereignty - the key assumptions of which are that the State recognizes no higher legal and constitutional authority than itself and has a monopoly on the legitimate use of force. Furthermore, the duty of the State to protect its citizens is generally taken to mean that citizens who transgress should be prosecuted under the State's own law and should not be subject to foreign jurisdiction. Consequently, a State is often reluctant to extradite its own nationals to another jurisdiction even if the other State has good reason to prosecute them. And even if the State is willing to extradite its own citizens for prosecution in another country, this may provoke violent opposition on the part of the transnational criminal organizations in their home base.*

10. The ability of States to cooperate in criminal justice and law enforcement matters depends in part upon the political relations between them. The more difficult the political relationship, the more sensitive such cooperation is likely to be - especially when different ideologies or value systems are in play, or when the levels of respect for human rights and freedoms differ. One of the problems here is that law enforcement cooperation has traditionally been treated as a matter of "minor" policy to be subordinated to the "major" policies associated with diplomatic relations, political and military alignments and security relations. The threat from transnational criminal organizations, however, makes law enforcement cooperation a priority.

11. The diversity of legal systems based on different principles, in which different activities are criminalized, sometimes makes it very difficult for States to cooperate. In fact, the difference between civil law and common law jurisdictions and between the different civil or common law systems can hamper the development of concerted approaches. A good example of this is that many civil law countries have a rule of compulsory prosecution that limits prosecutorial discretion and makes it more difficult to use criminal informants to obtain information on their organizations. Although the practice of using informants and initiating undercover operations has developed in many countries, these approaches - which are crucial to the fight against transnational criminal organizations - still encounter considerable resistance in others. Indeed, differences of attitude and approach and variations in criminal justice cultures remain evident even in regions where there is a high level of political and economic cooperation among States and where there is some progress towards the creation of "common judicial spaces". For example, in spite of the United Nations Convention against Illicit Traffic in Narcotic Drugs

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*This actually happened in one country, where the campaign of violence against extradition mounted by one drug cartel group resulted in a new constitution in which the extradition of nationals was expressly forbidden.

and Psychotropic Substances of 1988 (E/CONF.82/15 and Corr.2) and the steps taken towards political union, the patterns of legislation on drug abuse control differ widely in the States of Western Europe. When countries with different levels of economic development and very different cultural traditions are involved, the variations become even more pronounced, and the difficulties in the way of cooperation even greater. These different legal traditions have very important practical consequences on such issues as the admissibility of evidence.

12. Different countries also have different levels of sensitivity to particular problems. It is no accident, for example, that the United States of America and Italy have developed the most comprehensive legislation against organized crime, as this is something that Italy has had to deal with since the nineteenth century and that has been a problem in the United States since at least the prohibition era. For countries where the problem has not materialized to the same extent, readjusting the criminal justice system to respond to the threat from transnational criminal organizations is rarely a high priority.

13. Also, criminal justice systems have varying levels of effectiveness and efficiency. Even if there is a high level of sensitivity to the threat posed by transnational criminal organizations, it does not necessarily follow that the reaction to it will be sufficiently strong. For many of the countries making the transition to democratic governance and market economies - and certainly for most developing countries - the problem is a shortage of the human and material resources necessary for an effective criminal justice and law enforcement system. What makes this all the more disturbing is that "differences in effectiveness of legal system are exploited by transnational criminals and pose problems and frictions for law enforcement".[6]

14. Therefore, harmonization of national legislation is the premise on which the whole process of coordinating national efforts at least to check, if not to eliminate, the phenomenon of organized transnational crime is based.[7] For this, however, a strong political will is necessary, not only at the legislative level but also at the implementation stage. As a basis for the process of legislative harmonization there is a common perception of organized crime within the international community. A general agreement upon the essential concept and the use in all nations of similar, if not identical, types of criminalization for members of criminal organizations can help slow the spread of organized crime and will facilitate legal cooperation, especially when it is based on the principle of dual criminality.[8]

15. Another pervasive problem for cooperation is what has been termed "institutionalized corruption".[9] Law enforcement agencies can sometimes be reluctant to share information or engage in cooperative ventures with their counterparts in other countries because of the possibility that the information could be passed on to the criminals. As well as undermining the efficacy of law enforcement operations, leaks of this kind could place operatives in danger. When corruption also occurs at the government level, it can do much to undermine the will to respond to transnational criminal organizations - even if there is an acknowledgement of the threat and the capacity to do something about it.

16. A major, but rather sensitive, problem is posed by the fact that in certain circumstances it is not in everyone's interest to cooperate. This is the case when corruption has reached the highest levels of government, as cooperation can undermine government officials or even the Government as a whole. It is also the case with off-shore banking centres that act as tax havens. Not surprisingly, the authorities of these areas, and the banks themselves, are reluctant to provide for disclosure of information. Indeed, in many of these cases there are laws against such disclosure. This is the very antithesis of the transparency that law enforcement authorities need to respond to transnational laundering. Since many of these havens are, however, highly dependent upon their banking systems as major sources of finance and employment, national self-interest works against major changes and the development of sustained cooperation.

17. These problems, the restrictions on cooperation that result, and the frustrations they create for law enforcement may be understandable. They do, however, pose "a basic challenge to the state: how to control growing domains of transnational activities that either ignore or take advantage of national borders when the powers of the state remain powerfully circumscribed by the political, geographical, and legal limitations that attend notions of national sovereignty".[10] This challenge can be met only if the continued preoccupation with the symbolism of maintaining national sovereignty in law enforcement efforts is mitigated by the acknowledgment that sovereignty can be systematically and consistently undermined by transnational criminal organizations. The concomitant is that some nominal sacrifices of sovereignty that may help to make transnational law enforcement more effective are essential to respond to the growing transgressions against it. To relinquish some of the formalities of sovereignty means to restore the rule of law, taking into account existing realities, in order to "nullify the advantages that criminals derive from operating across borders and to reduce, circumvent or transcend the frictions that hamper international law enforcement".[11] This point was made very graphically by the former Minister of Justice of the Netherlands in his comment that the Russian Mafia is too dangerous a foe to allow the rule of law to be hindered by national borders: "The countries of Europe must be prepared to do away with customs and traditions that evolved over the centuries ... defending national sovereignty is a luxury we can no longer afford."[12] The comment is an important one, with a much wider applicability than Europe.

III. FACTORS ENHANCING INTERNATIONAL COOPERATION

18. While increased cooperation is a matter of urgency, it must, wherever possible, be accompanied by an acute awareness of the political and structural constraints faced by many Governments. Voluntary cooperation will generally work better than compulsory cooperation. At the same time, there may be cases, such as the offshore banking havens, where pressure from the international community has to be exerted in order to overcome the vested interest in maintaining the status quo.

19. Cooperation can take place in several different ways and at several levels. It can be informal and formal in nature, and both bilateral and multilateral in scope. Bilateral forms of cooperation undertaken by States with similar preoccupations and approaches tend to have a high payoff. Yet there are occasions, especially involving high-profile bilateral cooperation between unequal powers, when they can become unpopular in the weaker country. In these circumstances, it may be much more expedient politically to opt for a multilateral approach, rather than simply operating on a bilateral basis. Moreover, the various levels of cooperation should be regarded as complementary to one another rather than as alternatives. A "variable geometry" approach to cooperation, based on a thickening web of bilateral linkages complemented by multilateral approaches that provide a framework of principles, has certain advantages, especially if it can be developed in ways that allow it to take on its own dynamism. Incremental forms of cooperation help to build up trust and make it possible to move to more comprehensive activities. To the extent that cooperative ventures are successful, then the inhibitions to further cooperation are likely to be eroded, encouraging new initiatives.

20. International cooperation, although it has various components, needs to be integrated into a holistic approach. The logic of this was recently brought out in the Commission on Crime Prevention and Criminal Justice at its third session, and subsequently in the Economic and Social Council, when the importance was noted of using:

> "Normative and organizational measures that can be applied to every aspect of criminal activity. In other words, there is a need to devise strategies related to the structural characteristics of organized crime which, besides the essential element of having more individuals organized in a group, include the goal of profit-making; the use of violence,

> intimidation and corruption; the hierarchical links or personal relationships that make it possible to closely control the activities of the group; the economic control of whole territories; the laundering of illicit profits in order not only to organize other criminal activities but also to set up legal businesses (with the consequent effect of corrupting them); the great potential expansion beyond national boundaries; and the tendency to organize international operations together with other groups of different nationalities."[13]

In short, effective international cooperation needs to be as comprehensive as possible in order to attack the groups' structures, to disrupt their activities, to seize their assets and to incarcerate their members.

21. In considering issues for international cooperation, the importance of preventive measures must not be overlooked. International cooperation can play a significant role in terms of defensive measures or target hardening. It can help States to reduce the vulnerability of administrative and law enforcement agencies to corruption and to protect financial and commercial institutions against infiltration and ultimate domination by criminal organizations. Assistance with administrative laws and banking regulations, for example, could help to ensure greater transparency in company ownership, better scrutiny of acquisitions and transfers, and higher standards of ethics and accountability in both governmental institutions and the private sector. Such assistance should be aimed at mobilizing the private sector to act voluntarily to make the objectives of transnational criminal organizations more difficult to achieve. Furthermore, the establishment of international databases on national financial legislation and their implementation (namely, control of financial transactions and assets) certainly constitutes an important tool for both the control and the prevention of organized transnational crime.

22. A basic principle of all international cooperation to deal with transnational crime is that it should be compatible with respect for human rights and the protection of individual freedoms. Without this basic safeguard, the measures that are taken could attract criticism and fail to obtain legitimacy - something that transnational criminal organizations would be quick to exploit. If vigorous actions against transnational criminal organizations and the crimes they commit are to be accepted by domestic constituencies, these actions have to take place within a framework of high legal and ethical standards.

23. Cooperation and especially forms of mutual assistance should be sensitive to cultural norms and political sensibilities. In other words, as was noted in the Commission on Crime Prevention and Criminal Justice at its first session, "cooperation should not assume forms that placed the receiving countries in a passive and disadvantaged position. On the contrary, since it was the shared responsibility of all countries, international cooperation against escalating transnational crime should be structured on the basis of true partnership".[14] At the same time, it must be recognized that partnership means that countries receiving mutual assistance also have a responsibility to make good use of it.

24. One of the major objectives of international cooperation must be to create greater harmonization in criminal justice systems, by improving the standards of countries with weaker criminal justice systems in general or by developing national legislation specifically directed against organized crime. It is crucial to eliminate "sanctuary States" and ensure that national legislation against transnational organized crime is as compatible as possible. Complete harmonization is, of course, impossible, for some of the reasons identified above. Yet there is a level of harmonization, perhaps better described as inter-operability, that allows for continued national differences while still achieving the necessary degree of complementarity for effective concerted action against transnational crime. It has been emphasized that "investigation of transnational crime, no less than its prosecution, will likewise involve multiple jurisdictions and cooperation among different governments. To be useful, the products of these investigations should be as nearly interchangeable as possible. Procedures need not necessarily be identical but they should incorporate rules to protect the accused, limit police power, ensure equitable tribunals and provide decent prisons".[15] Growing interchangeability and the capacity to use information

and evidence across national jurisdictions are of major importance in the fight against transnational crime.

25. Effective international cooperation requires speedy exchanges among nations and heightened responsiveness to requests for information or assistance. There are occasions, for example, when criminals are arrested but then allowed to go free because the paperwork from another country has not arrived. A more rapid response is crucial for dealing with urgent situations. Indeed, expediting responses to requests for assistance should be given high priority. Where necessary, technical assistance, especially in the form of computers and data-processing capabilities, could significantly improve the responsiveness to such requests.

26. It is important to build on the work of existing organizations, such as the International Criminal Police Organization (ICPO/Interpol) and others, and to consolidate the very extensive but still ad hoc arrangements that currently exist for cooperation so as to consolidate these activities and achieve more effective and efficient outputs. Cooperative institutions and arrangements already in place include ICPO/Interpol, the Financial Action Task Force on Money-Laundering, set up by the Group of Seven major industrialized countries, the Council of Europe, the European Union, the Schengen Group and the Commission on Crime Prevention and Criminal Justice. Contacts, coordination and cooperation among these bodies should be encouraged. In particular, it is of fundamental importance that all existing technical, bilateral and multilateral activities involving technical cooperation be well focused and that the means for coordinating such activities be studied in order to avoid overlapping.[16]

27. Cooperation should be commensurate with the threat - and the threat is more formidable than is usually realized. In a world in which a growing number of countries are affected by a crisis of governance, the opportunities for transnational crime are ever increasing.[17] Indeed, it is arguable that in the "post-cold-war" era, mutual assistance will take on greater importance, at the same time as military assistance is declining in significance. In these circumstances, Governments should be prepared to allocate significant appropriations for assistance in dealing with transnational crime.

28. Cooperation should not be pursued at the expense of all other goals - and in particular at the expense of the integrity and effectiveness of national investigations. The sharing of information, for example, is usually highly desirable, but when it could undermine national efforts to apprehend a particular criminal or group, withholding it or postponing it to a later stage is the preferable option. Such caveats are a recognition of the fact that cooperation is merely a means - albeit a very important one - rather than an end in itself. And at times, other objectives may override the impulse for cooperation.

29. Cooperation should be multifaceted - and should encompass such activities as extradition and mutual assistance, a willingness to enforce foreign judgements, and a readiness to transfer criminal proceedings and offenders from one jurisdiction to another. In addition, cooperation could be extremely useful in mobilizing both public opinion and the business sector against transnational crime. The media, for example, has enormous potential to expose corruption in government and could be a considerable asset in efforts to achieve greater transparency.

30. Cooperation is not simply a substantive matter but also a procedural one. In this connection, the process of cooperation itself needs to be enhanced. One way of doing this is to assign to a central authority the task of facilitating and coordinating international cooperation efforts, including such matters as extradition requests and the implementation of treaties.[18]

31. Cooperation against transnational organized crime requires the development of particular kinds of investigative and prosecutorial capabilities that are not readily available. One of the main themes of

cooperation, therefore, should be to mobilize, pool and jointly use "available resources, including expertise and facilities such as training centres, and through the transfer of knowledge, information and technology to foster operational compatibility on a global scale".[19]

IV. INFORMAL METHODS OF COOPERATION

32. The detection, investigation, prosecution and adjudication of organized transnational crime are laborious and complex activities because of the involvement of authorities of many countries and of different legal systems, and of the various difficulties of communication across borders. Therefore, the establishment of links at the operational level and direct communication in a more informal fashion can be invaluable in smoothing out difficulties and preventing delays or misunderstandings, provided such informal arrangements do not jeopardize the fundamental rights of those involved in investigations or criminal proceedings.

A. Personnel exchanges

33. One of the most effective ways to enhance the capacity to deal with transnational criminal organizations is to take relatively informal measures that are designed to reinforce the so-called "law enforcement's transnational subculture" based on common functions and objectives: "... it is this transnational identity - based on the notion that a cop is a cop and a criminal is a criminal, no matter what their respective nationalities - that provides the oil and the glue of contemporary international law enforcement."[20] One of the best ways of doing this is through personnel exchange programmes.

34. Although criminal justice attachés at embassies and consulates play an important role in enhancing understanding of their countries' laws and judicial procedures, their work needs to be supplemented by personnel exchange programmes at the level of criminal intelligence and law enforcement operations against transnational criminal organizations. Such programmes could be a very useful means of facilitating effective cooperation in response to transnational crimes.[21] To be really effective, however, international exchanges should be built into the patterns of career advancement in such a way that they become attractive to the most able law enforcement officers. Such schemes would have several advantages. For example:

(a) A systematic personnel exchange programme would be of enormous help in generating trust and building up the necessary contacts to form a network of law enforcement officials able and willing to work together with those from other countries. It is crucial to establish extensive transnational networks that can operate informally as well as formally. Indeed, building up relationships of trust between individuals from national police forces is essential if the kind of loose network structures that characterize the criminal organizations are to be countered by similar structures in law enforcement. It also means that there will be a greater willingness to work together even where there are political and bureaucratic obstacles;

(b) Personnel exchanges would assist in bringing in experts who can provide novel insights into the problem, based on national or ethnic backgrounds and past law enforcement experience. Law enforcement establishments in Western Europe and the United States, for example, could benefit considerably from the incorporation - on a temporary or permanent basis - of law enforcement officials from Hong Kong experienced in dealing with the challenges posed by Chinese Triads. More generally, exchanges would make it easier to infiltrate ethnically based criminal organizations by helping to surmount the barriers of language and ethnicity;

(c) Personnel exchanges would lead not only to a greater willingness to respond positively to requests for assistance, but also to a better understanding of the constraints that affect counterparts in different countries. This in turn could help contribute to a realization that lack of cooperation may be a result of external factors, rather than a lack of desire or will on the part of the national police forces themselves;

(d) It would be extremely useful not only for law enforcement and criminal justice personnel but also for staff of relevant administrative bodies, for example those in the financial sector that are responsible for analysing financial transactions, to take part in these exchanges.[22]

35. There are, of course, some dangers involved, not least of which is the risk of infiltration by foreign law enforcement officers who may have been corrupted by criminal organizations. Such exchanges, therefore, require very careful vetting to ensure the reliability of those involved. So long as these precautions are taken, however, this is a relatively modest step - and it is a case of systematically building on what has already been done in this area - that can have substantial benefits.

B. Sharing and exchange of information

36. One of the most important commodities in the efforts to deal with transnational criminal organization is information. Even at the national level, however, information is all too often jealously guarded, bureaucratically fragmented and treated as a resource in inter-agency power struggles rather than one of the keys to an effective response to transnational organized crime. In recent years, some efforts have been made to go beyond this by setting up national centres responsible for amassing intelligence on drug trafficking and other transnational criminal organizations. The creation of the National Drug Intelligence Center in the United States and the National Criminal Intelligence Service in the United Kingdom of Great Britain and Northern Ireland are good examples of the kind of centralized intelligence organizations that are likely to prove increasingly useful in the struggle against organized crime. Moreover, in certain countries, specialized investigative units dealing with organized crime,[23] such as the Anti-Mafia Investigative Board (Direzione Investigativa Antimafia) in Italy, gather information that is necessary for investigation and prosecution, thus functioning as an intelligence service.

37. Such agencies can provide both up-to-date and analytical assessments of transnational criminal organizations and their activities. By encouraging a better understanding of the "complex combination of activities, people and means" that make up transnational organized crime, they facilitate the exchange of intelligence that is essential for both day-to-day policy-making and strategic planning.[24] To this end, important categories of information need to be further developed, analysed and shared. These include the profile of organizations and their power structures, evidence about the leadership, the extent to which the organization has infiltrated legitimate business, the nature of the interrelations between the street and intermediary levels on the one side and the main organization on the other, and the strategic alliances that are developing among organizations.* Upgrading the quality of organization analyses at the national level provides a much better basis for exchange of information at the international level.

38. Although any scheme for intelligence sharing has to combine the transmission of sensitive information with the need for security, both in transmission and with the recipient, the provision of real time information can be very helpful in apprehending those engaged in transnational crime.[25] This was

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*A useful assessment of information needs can be found in the discussion guide for the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, under topic 2 (A/CONF.169/PM.1 and corr.1).

reflected in March 1993, when Germany and the Russian Federation signed a protocol establishing rules for cooperation. In a different context, an encrypted communication system has been set up between the Federal Bureau of Investigation (FBI) in the United States and the Anti-Mafia Investigative Board in Italy, with routine exchanges which include:

(a) Information on those who have committed crimes and might be moving into one's jurisdiction. This is provided, as a rule, in the red notices supplied by ICPO/Interpol;

(b) Information on stolen art objects and antiquities that is passed on in an effort to prevent the illegal sale of movable cultural property;

(c) Information that can be used in passport and travel controls and that identifies vehicles and vessels used in transnational criminal activity;

(d) Information on new trafficking patterns and new trends in drug abuse (for example, the use of methcathinone);

(e) Information on money-laundering and financial transactions;

(f) Information on methods of concealment - as currently provided by the Customs Co-operation Council.

39. Such exchanges are designed to share information on who the criminals are, where they are, what they are doing, and how they are doing it, with continuous improvements at both the operational and the strategic levels, in order to identify the major transnational players and their impending operations. In considering ways of further improving the exchange of information, however, it is important to ensure that good use is made of existing data nets, such as that provided by ICPO/Interpol, which has created a database on enterprises and groups of persons engaged in illegal profit-making activities. Moreover, the range of countries that are provided with the information should be extended - although this also requires that the relevant authorities make good use of such information, protecting it from unauthorized leaks. There is an inescapable trade-off between the need for security and the need to share information. This difficulty is compounded by the fact that, with the end of the cold war, a number of national intelligence services have become increasingly involved in the struggle against transnational organized crime and drug-trafficking. This poses problems regarding the sharing of information even with law enforcement agencies at the national level, let alone with other nations. An additional complication is that a number of countries have adopted legislation that requires data to be protected in order to guarantee the privacy of their citizens.

40. Efforts should nevertheless be pursued to develop a more coordinated and extensive sharing of information based on the upgrading of national efforts, the development of interfaces with relevant organizations and the provision of information and computer technology and assistance to developing countries[26] and countries in transition. The increase of fax capabilities means that it is possible to have extensive "hot line" type capabilities at a relatively modest cost. The other requirement is that national contact points should be designated, which would be computerized and would provide continuous liaison and rapid responses both to requests for and receipt of information.

41. As for the researching and passing on of information, at the international level, on organized crime and on legislative and organizational regulations set up in individual countries, an important role could be played by the United Nations,[27] provided that there is appropriate input and feedback, on a continuing basis, from all countries concerned, as well as a minimum of resources to process and disseminate relevant information.

C. Bilateral and multilateral task forces

42. Other types of initiatives that have yielded good results are the multinational task forces.[28] Increasing both the scope and the number of joint operations against transnational criminal organizations could help to disrupt their activities and result in major seizures of their assets. In certain cases it could be necessary for a specific country to take the lead, as the United States Drug Enforcement Administration did with Operation "Green Ice", an undercover money-laundering operation that led to numerous arrests in 1992 in Canada, Italy, Spain, the United Kingdom and the United States. Such operations are able to attack the organizational structures underlying transnational crime and are generally extremely disruptive. They can also yield new information on the activities of the criminal organizations. In addition, they help to establish habits of cooperation that can be consolidated and extended in the future. Although such operations are generally easier to implement on a bilateral rather than a multilateral basis, as the linkages among transnational criminal organizations become more pronounced, multilateral operations will become even more important. National participants can provide complementary skills and expertise in ways that have a multiplier effect on law enforcement. This requires a certain minimum level of skill and expertise from all the participants. In some cases, however, this expertise is lacking. It is therefore crucial to enhance the capabilities of States with weaker criminal justice and law enforcement systems, by means of proper training and assistance programmes.

D. Strengthening law enforcement capabilities

43. The challenge posed by transnational organized crime is a formidable one, and one that most States are not equipped to meet. One of the crucial tasks for the international community, therefore, is to ensure that law enforcement is equal to the challenge it faces, especially in the developing and transition countries. In fact:

> "A highly qualified, interdependent and coordinated response is an essential ingredient of more effective action. This will involve a considerable human resource investment in order to provide or refine cross-sectoral professional training of high calibre, using the normative yardstick of international standards. The upgrading of specialized technical skills is necessary, together with development of an effective individual and collective operational capacity at the field level. It requires personnel conversant with organized crime techniques, as well as with substantive and procedural law of domestic and other relevant jurisdictions. It also requires familiarity with the provisions of existing international conventions, standards and norms, agreements and other arrangements (including those related to seizure of the proceeds of crime, mutual legal assistance, extradition, prisoner transfer, transfer of criminal proceedings, and procedures such as controlled delivery). These are all designed to enable better collaborative transnational action."[29]

44. There are several schemes already in place that are designed to bring the level of criminal justice systems up to a point at which they can cope more effectively with all forms of crime, including transnational organized crime. These schemes include arrangements initiated or supported by individual countries, those that are carried out on a regional or subregional basis and those under the rubric of international agencies and organizations.*

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*One example of training provided by a particular country is the International Criminal Investigative Training Programme, established by the United States Congress in 1986 to enhance the capacity for investigations in democracies in Latin America and the Caribbean. This scheme is under the authority of the Deputy Attorney General but is funded by the State Department. The scheme has obtained considerable support from the Department of Justice, and the FBI which is not only providing

45. Assistance should be regarded as a matter of self-interest and not altruism: the developed countries themselves will eventually benefit if they provide the means of empowering developing countries to respond to problems of organized and transnational crime in all its forms. Although the specific needs of the countries requiring assistance must be the final determinants of the shape of assistance packages, assistance is generally needed in four main areas: establishing the legal framework, training personnel to implement it, providing the technology that is necessary to manage it effectively, and providing support to protect the criminal justice system and its members against corruption, intimidation and violence.*

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assistance with training programmes but is also sharing its resources, including facilities at the FBI Academy at Quantico. The programme includes academic instruction for criminal justice personnel and is designed to improve the investigative, administrative and management abilities of law enforcement agencies. Although its main thrust is assistance for police agencies, it also works with judges and prosecutors. In addition, specialized training has been provided under the Colombian Judicial Protection Programme (which began in 1989 under counter-narcotics legislation) and involves protection strategies for judges and others who are under threat. The scheme not only enhances the criminal justice and law enforcement capacity of States in the region but also contributes to the creation of law enforcement networks and the promotion of regional cooperation (Roger Yochelson, "International police training", in Law Enforcement Bulletin, vol. 62, No. 4 (April 1993), pp. 6-11). Examples of assistance provided at the regional or subregional level include the Demosthenes Programme carried out by the Council of Europe and the assistance provided to the Baltic States by the Nordic Council, which has established liaison offices in Estonia, Latvia and Lithuania, as well as at St. Petersburg, and provides assistance with border controls and crime prevention (Christopher J Ulrich, "The growth of crime in Russia and the Baltic region", RFE/RL Research Report, vol. 3, No. 23 (10 June 1994), pp. 24-32). At the global level, both the United Nations International Drug Control Programme and the Crime Prevention and Criminal Justice Branch of the United Nations Secretariat provide practical assistance through institution building and human resource development by means of training courses and seminars, and through the coordination of technical cooperation efforts. In particular, the Branch carries out technical cooperation activities, mainly in the following areas: facilitating the exchange of information (e.g. clearing-house functions), contributing to training activities organized by other entities, such as intergovernmental or non-governmental organizations; organizing training on specific issues, at the request of a Member State or an organization; preparing training materials; preparing comprehensive technical assistance projects; and contributing to broader operational activities implemented by the United Nations, such as peace-keeping and peace-building operations. The Branch also provides advisory services for law reform, the drafting of new legislation, improving the administration of criminal justice and setting up crime prevention policies (see the report of the Secretary-General on technical cooperation and advisory services of the United Nations crime prevention and criminal justice programme, including appropriate mechanisms for the mobilization of resources (E/CN.15/1994/6). In connection with drug-related issues, similar activities are carried out, in cooperation with the Branch, by the United Nations International Drug Control Programme, for example in the Expert Working Group on Mutual Legal Assistance and Related International Confiscation, the Interregional Investigation Techniques Course on Money-Laundering, and advisory services for the implementation of the United Nations Vienna Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988. (See the note by the Secretariat on the coordination of drug-related activities and cooperation between the United Nations International Drug Control Programme and the Crime Prevention and Criminal Justice Branch of the Secretariat (E/CN.7/1994/7).)

*Regarding the need to reform existing legislation, develop new legal frameworks and train law enforcement personnel in order to achieve effective international cooperation, see the report of the Secretary-General on the status of preparations for the World Ministerial Conference on Organized Transnational Crime (E/CN.15/1994/4), para. 25.

46. A viable legal framework can be established in countries that do not have a penal system suitable for fighting organized crime at either the national or the transnational level through assistance in the drafting of new laws. Technical assistance in drafting, revising and implementing relevant legislation is crucial, in particular in terms of the provision of available options and models, which could be adapted to the specific legal, political, cultural, economic and social contexts of each country.

47. In order to implement the framework it is necessary to have trained personnel. This need can be met through increased resources for training courses for law enforcement officials at the regional and interregional levels. In addition, the provision of special courses for personnel involved in detecting, investigating, prosecuting and adjudicating cases involving transnational organized crime (namely the police, investigating judges and magistrates, and technical and investigative support staff) is essential. One of the aims should be to produce law enforcement personnel able to form specialized investigative units that are able to develop information-gathering techniques such as the interception of communications, controlled deliveries, and cooperating witnesses. Another priority area should be training programmes designed to help law enforcement personnel to "follow the money trail" and develop ways of confiscating the proceeds of crime, since the laundering and use of proceeds of crime are among the primary objectives of organized crime and international cooperation to counter these activities is essential.[30] In addition, training programmes to deal with new threats, such as the smuggling of radioactive materials, would seem to be crucial. Finally, where necessary, the capability to prevent, detect, and prosecute instances of corruption by public officials and members of the criminal justice system itself should be developed. Anti-corruption training courses should emphasize prevention and education, as well as control measures.

48. It is also important that developing countries and countries in transition should receive assistance in developing or operating the technological capabilities that permit them to use and share information effectively. As transnational criminal organizations make full use of technology, it is essential that law enforcement agencies should also have access to computerized systems and, in some cases, other high-technology devices, including those necessary to detect radioactive material. Greater computer awareness is essential not only for the exploitation of data but also because of the growth of computer-related crimes and because money-laundering transactions and other economic crimes are carried out through sophisticated computer operations.

49. An efficient and effective criminal justice and law enforcement system should take special measures to protect itself against corruption, intimidation and violence. Ensuring the implementation of national codes of conduct for public officials is certainly helpful, as would be the designation of specific units at the national level charged with investigating corruption.* Transnational criminal organizations have large resources available for bribery and corruption and the temptations are particularly great for police officers, who often barely earn a subsistence wage.

50. Measures should also be initiated to protect the criminal justice system as a whole, that is, the persons, institutions and structures involved in the mission of investigating, charging and adjudicating. Indeed, the importance of protecting both prosecutors and cooperative witnesses from coercion and violence by transnational criminal organizations is difficult to overestimate. Consequently, it is essential

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*The Code of Conduct for Law Enforcement Officials, adopted by the General Assembly in its resolution 34/169, provides in its article 7 that "Law enforcement officials shall not commit any act of corruption. They shall also rigorously oppose and combat all such acts". See also the special double issue of the International Review of Criminal Policy, Nos. 41 and 42 (1993) (United Nations publication, Sales No. E.93.IV.4), devoted to practical measures against corruption.

to "create disincentives to attempted interference ... by minimizing the results of any interference and by maximizing the costs to the criminal and the difficulty involved in any such attempt".[31]

51. The results of interference can be minimized through arrangements that make individual officials less attractive targets for bribery or intimidation. For example, for police and prosecutors, task forces and collegial arrangements give the investigation greater resilience and mean that, even if one or more individuals are killed, action can still be taken against the criminal organization; for judges, a sentencing regime in which there are clear and fixed guidelines limits discretion and makes them less susceptible to bribery and intimidation; juries are less vulnerable to "fixing" if they operate according to majority verdict rather than on the unanimity principle; witnesses are less likely to be targeted to the extent that a case can be made on alternative methods of proof, obtained, for example, by electronic surveillance, physical surveillance and seizures of documents and other incriminating matter.

52. In addition, steps can be taken to make it more difficult for criminals to use violence, intimidation or corruption against either witnesses or members of the criminal justice system. This can be done by moving the trial to another area where protection schemes are more effective, or through cooperation in the international relocation of witnesses and the establishment of new identities that would make it difficult for the criminal organizations to find them and seek retribution.

53. With regard to international relocation, it will be necessary to create the equivalent of the sanctuaries that the transnational criminal organizations themselves use so effectively. There might be a problem in terms of determining how the financial burden of such a scheme is to be shared; the possible reluctance of some witnesses to move to another country could also cause difficulty. The former problem could be overcome through the establishment of an international fund to provide for relocation of witnesses and in some cases for judges and jurors. Moreover, the principle could be established that relocation must involve a net improvement in the standard of living for the witness, which could help to overcome the latter difficulty and in some cases might even encourage witnesses to testify. This implies, however, that there must be a willingness on the part of the Governments involved to facilitate immigration and to share the responsibility for relocation and for any attendant matters.

54. Together, these measures can contribute to the creation of effective and viable criminal justice systems, which will be better equipped to withstand the assault of transnational criminal organizations and to challenge their determination to maintain safe havens.

V. FORMAL COOPERATIVE ARRANGEMENTS

55. In addition to the relatively informal methods of cooperation outlined above, there are also more formal arrangements in relation to the apprehension of fugitives and the provision of information for prosecution. In particular, national and international efforts to achieve more effective strategies to deal with transnational crime focus, inter alia, on cooperation through extradition, mutual legal assistance, enforcement of foreign judgements and transfer of criminal proceedings and offenders.[32] The United Nations model treaties could be very useful to Member States in their efforts to combat crime at the national, regional and international levels.[33]

A. Facilitating extradition

56. Extradition is one of the most important areas for international cooperation. It may, however, touch a sensitive chord in the matter of sovereignty, and in certain cases it could be politically controversial; there may also be some weaknesses in current practices and procedures. For example, the civil law

tradition that underpins the legal systems of many countries forbids extradition of their citizens to other States (although they are able to prosecute citizens for crimes committed elsewhere). Furthermore, even if there is a treaty on extradition, this may not be implemented in particular instances because it does not cover a particular offence, as most treaties usually include the "dual criminality" and the "reciprocity" principles. Yet another problem is that countries may sometimes interpret the political offence exception clause in ways that allow them to refuse extradition without outright rejection of the request.[34]

57. In the face of such weaknesses, countries have opted for other alternatives, such as asserting extraterritorial jurisdiction, for example, in which a country authorizes its law enforcement officials to enter another State and seize wanted criminals. This option, however, is unpopular and usually leads to controversy instead of furthering cooperation. Two somewhat less unpalatable alternatives are: informal assistance, where the offender is expelled from the country rather than formally extradited; and informal circumvention where the target criminal in one country is lured into the territory of the country trying to bring him or her to justice. Ultimately, though, these are only palliatives that do not solve the fundamental problems, while they also raise a number of issues regarding their compatibility with international law.

58. Extradition is important in denying sanctuary to criminals and in compensating for the uneven development of criminal justice systems. Given its importance, therefore, serious consideration needs to be given to making the process much smoother and making countries more receptive to requests. One way of doing this is through the creation of greater inter-operability and harmonization among criminal justice systems. This would make it far easier to establish dual criminality. The introduction of conspiracy crimes in countries where the category does not exist would also be an important step in this direction.

59. In a sense, this would make it easier to meet the existing requirements. An alternative approach, however, is to ease these requirements. In particular, consideration should be given to reassessing the principle of reciprocity and the requirements on dual criminality and speciality. A more stringent approach could also be taken, before the political offence exception is brought into play, while a more permissive policy could be adopted towards the extradition of nationals. The political offence exception, in particular, should not be a bar to extradition for involvement in transnational organized crime.[35]

60. A further change that would help to make extradition more effective would be to improve upon existing procedures to ensure that, in cases where it is permissible, extradition is effected without undue delay. This could be done by establishing designated central authorities to process requests for mutual assistance in criminal matters and extradition. In this connection, the Council of Europe has established procedures that have gone a long ways towards reducing the difficulties associated with the technical requirements for extradition.[36]

61. Another improvement would be for countries to extend cooperation through new extradition treaties, as part of multilateral conventions, regional treaties or bilateral agreements. The Model Treaty on Extradition (General Assembly resolution 45/116, annex), which has received the necessary universal consensus of the international community, can serve as a basis for negotiations. The model is broad in scope and involves the agreement to extradite any person who is wanted in the requesting State for prosecution for an extraditable offence (namely an offence that is punishable under the laws of both parties by imprisonment for at least a year). Although the Model Treaty allows for optional refusal if the person is a national, the requested State has an obligation - if asked - to submit the case to its own authorities to consider prosecuting the person for the offence for which extradition was requested. The Model Treaty also has provisions related to procedures, which emphasize the need for specific channels of communication and clarify the documentation requirements. Application is allowed for provisional

arrest where this is a matter of urgency and a formal request is pending. Significantly, the Model Treaty also contains provisions for the surrender of property acquired as a result of the offence.

62. The possibility of using transfer of proceedings, for which another model treaty (General Assembly resolution 45/118, annex) has been drawn up, as an alternative when extradition is not possible, is an attractive one. The Convention on the Transfer of Proceedings in Criminal Matters,[37] drawn up within the framework of the Council of Europe, may also be useful in cases in which extradition appears to be unsuitable.

63. Widespread reliance on extradition treaties would not, however, solve all the problems associated with the many issues related to extradition. There may, in fact, be an irreducible minimum of cases that would remain both difficult and extremely controversial.* Nevertheless, the steps outlined would certainly increase the capacity of Governments to bring to justice members of transnational criminal organizations.

B. Encouraging mutual assistance

64. Mutual assistance, like extradition, falls under the heading of international cooperation, which involves assistance in another country's penal processes, usually within a treaty framework. While extradition is concerned with rendition of offenders, mutual assistance deals especially with various forms of cooperation at the investigative stage, in order to collect evidence.

65. Obtaining evidence and witnesses from another country in ways that can be used in one's own courts is crucial at the prosecutorial level to deal with transnational organized crime. Yet it is also highly dependent upon legal formalities, offering little latitude for informal understandings and tacit cooperation, as "differences between national law enforcement systems - in particular between the adversarial, common law system of the United States and the inquisitorial, civil law system found in much of Europe and Latin America - generate confusions, misunderstandings and tensions".[38]

66. Mutual assistance treaties represent the primary response to this and are designed to facilitate the collection of evidence from foreign jurisdictions in a form admissible in one's own courts.[39] They are an attempt to reduce the frictions and obstacles to international evidence gathering, and contribute to the gradual homogenization of criminal procedures.[40] Moreover, although they still have limitations, such treaties are far superior to "letters rogatory", which tend to be very slow, and "have proven ill-suited to the increasingly complex and voluminous needs of modern international law enforcement methods".[41] Mutual assistance has done much to fill the gap.

67. In fact, the inroads made into transnational criminal organizations through the use of mutual assistance treaties have been very considerable. For example, the United States treaty with Switzerland signed in 1977 has had significant results in providing information related to drug trafficking and money-laundering. Switzerland has provided evidence admissible in United States courts and has even agreed to make the provision of assistance obligatory in organized crime cases, even where the alleged offences did not meet the requirement of dual criminality. Although there were initial problems, these were gradually overcome - especially after Switzerland in 1989 passed legislation making money-laundering a criminal activity. Thus, in April 1994, Swiss authorities seized 150 million dollars from

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*See, for example, "La batalla de Montevideo", El País, 26 August 1994. Two persons died and seventy-five were wounded as a result of a violent protest against the extradition from Uruguay to Spain of three fugitives.

bank accounts in Zurich that had accumulated since the 1970s and was believed to be the proceeds of drug trafficking. The accounts, belonging to two Colombian drug traffickers who had been indicted by a Miami grand jury, were seized as a result of a request by the United States under the treaty.[42]

68. Such treaties, as an instrument of international cooperation, have gradually become more innovative and extensive. For example, the treaty between the United States and Italy, which came into force in 1985, includes an "international subpoena", whereby one State can request the other to compel a person to appear and testify in the requesting State, as well as a provision authorizing the immobilization of assets in the requested State and their forfeiture to the requesting State. The treaty between the United States, The United Kingdom and the Cayman Islands includes provision of documents, location of persons, transfer of persons in custody to give testimony, implementation of requests for search and seizure, and assistance in the freezing and forfeiture of assets. The treaty between Thailand and the United States is even more far-reaching. For instance, "no requirement of dual criminality is imposed on requests for assistance, thereby permitting Thai assistance in drug conspiracy cases despite the lack of an exact counterpart in Thai law, and authorizing US assistance in violations of Thai currency control laws for which dual criminality might not be found in US law".[43]

69. It is clear, even from these few examples, that such treaties have been one of the successes of international law enforcement cooperation. They could, indeed, be used even more extensively. The Model Treaty on Mutual Assistance in Criminal Matters (General Assembly resolution 45/117, annex) provides an important basis for further development of such treaties. The Model Treaty has a broad scope and suggests, in article 1, paragraph 1, that States "afford to each other the widest possible measure of mutual assistance in investigations or court proceedings". This includes the taking of evidence, assistance in making detained persons available to assist in investigations, the execution of searches and seizures, and the provision of information and evidentiary items. Although safeguards are also built in to allow refusal, the treaty makes it clear, in article 4, paragraph 2, that assistance "shall not be refused solely on the ground of secrecy of banks and similar financial institutions".

70. Once again there is a provision for the designation of authorities to receive requests, which are to be promptly executed and kept confidential. Attached to the Model Treaty is the Optional Protocol regarding assistance in forfeiture of the proceeds of crime, which could be particularly attractive if the states involved reach an agreement to dispose of the proceeds among themselves, as an incentive to cooperation.

71. To have maximum effectiveness, these model treaties - like other bilateral and regional treaties or conventions such as those drawn up by the Council of Europe[44] - have to be supported by legislation at the national level, which should be as streamlined as possible, both as to substantive law and as to procedural matters. They should also be implemented efficiently, using standard request forms and going through the designated authorities. In addition, they would need to be reviewed periodically, to encompass new forms of criminality, such as computer-related crimes.

72. In order to assist Member States in such endeavours, the Crime Prevention and Criminal Justice Branch of the United Nations Secretariat is preparing two manuals providing guidelines on how to implement the Model Treaty on Extradition and the Model Treaty on Mutual Assistance in Criminal Matters, drawing on current experience and practice. Moreover, assistance has been provided by the Branch to the Executive Secretariat of the Economic Community of West African States (ECOWAS) in the elaboration of a new Convention on Mutual Assistance in Criminal Matters, based on the Model Treaty. The Convention was adopted by the Heads of States and Government of ECOWAS at their annual summit, held at Dakar on 29 July 1992. The Branch also provided expertise to ECOWAS in the preparation of an additional draft convention on extradition, again based on the Model Treaty on Extradition.[45]

VI. CONCLUSIONS

73. Although progress has been made towards achieving the level of cooperation that is necessary to respond to transnational criminal organizations, much remains to be done. Ultimately, however, this depends upon the will of Governments to allocate both human and financial resources to the efforts to control and prevent transnational organized crime. This in turn requires that there be a recognition of the threat throughout national Governments, and not just in ministries of justice or of the interior. It might be advisable to consider whether international conferences on the issue of transnational organized crime and its implications should be held periodically, in order to establish and update goals and benchmarks and systematically assess the extent to which they have been achieved. Annual international meetings, both at the regional and subregional levels, of heads of national law enforcement agencies responsible for preventing and controlling organized and transnational crime could be another suitable setting in which to identify proper countermeasures to be implemented at the national level.

74. These meetings would not only provide an added impetus for better cooperation, but they could also assist in making public opinion more sensitive to the threat of transnational organized crime and in mobilizing the private sector to take protective measures against it, especially through the adoption of measures to achieve greater transparency. Furthermore, they would offer opportunities to refine the agenda of cooperation, both from the substantial and the procedural points of view, for consistent review by the Commission on Crime Prevention and Criminal Justice.

75. The fight against organized transnational crime, whose activities are becoming more and more internationally widespread, calls for the use of modern, flexible and effective countermeasures on an international scale. The main issue, however, is the urgent need to implement such measures, as no effective results can be obtained from attempts to curb organized transnational crime when they are neither timely nor comprehensive. There should therefore be a widespread awareness at the political level of the fact that this struggle is a matter of "high priority" on the international agenda.

76. What emerges clearly, is the urgent need for strengthened international cooperation with the main focus on the following areas:

(a) Harmonization of legislative and other countermeasures;

(b) Training and exchange of law enforcement and criminal justice personnel;

(c) Information-sharing among relevant agencies;

(d) Joint force operations or task forces;

(e) Protection of witnesses, investigators and judges;

(f) Elaboration of new measures and updating of existing ones, on the basis of a periodic assessment of results achieved;

(g) Technical cooperation and assistance in drawing up such countermeasures;

(h) Clear identification of coordinating authorities in the individual countries;

(i) Measures to encourage the adoption and improve the implementation of existing cooperation arrangements (for example, conventions and model treaties on extradition, mutual assistance and transfer of proceedings);

(j) Effective coordination of activities at the bilateral, regional and multilateral levels.

Notes

[1]Malcolm Anderson, Policing the World: Interpol and the Politics of International Police Cooperation (Oxford, Clarendon Press, 1989), p. 26.

[2]Bruce Zagaris and Sheila Castilla, Implementation of a Worldwide Anti-Money Laundering System: Constructing an International Financial Regime (Washington, Police Executive Research Forum, July 1993), p. 62.

[3]See Economic and Social Council resolution 1994/12, annex, para. 38.

[4]Ethan A. Nadelmann, Cops Across Borders (University Park, Pennsylvania, Pennsylvania State University Press, 1993), p. 4.

[5]Discussion document on the World Ministerial Conference on Organized Transnational Crime (Economic and Social Council resolution 1994/12, annex), paras. 17-18.

[6]Nadelmann, op. cit., p. 5.

[7]Recommendations of the Ad Hoc Expert Group Meeting on Strategies to Deal with Transnational Crime, held at Smolenice from 27 to 31 May 1991 (Economic and Social Council resolution 1992/23, annex I), subparas. 7 (a) and 7 (b).

[8]Discussion document on the World Ministerial Conference on Organized Transnational Crime (Economic and Social Council resolution 1994/12, annex), paras. 8 and 13.

[9]Nadelmann, op. cit., pp. 251-312.

[10]Ibid., p. xiv.

[11]Ibid., p. 6.

[12]"Dutch see Soviet Mafia casting shadow across Europe", Reuters, 20 April 1994.

[13]Discussion document on the World Ministerial Conference on Organized Transnational Crime (Economic and Social Council resolution 1994/12, annex), para. 9.

[14]See Official Records of the Economic and Social Council, 1992, Supplement No. 11 (E/1992/30), chap. III, para. 62.

[15]Testimony of Philip B. Heymann, Deputy Attorney General to the Foreign Affairs Committee, United States House of Representatives, September 14 1993, p. 3.

[16]Discussion document on the World Ministerial Conference on Organized Transnational Crime (Economic and Social Council resolution 1994/12, annex), para. 34.

[17]Roy Godson and William J. Olson, International Organized Crime: Emerging Threat to US Security (Washington, National Strategy Information Center, 1993).

[18]Recommendations of the Ad Hoc Expert Group Meeting on Strategies to Deal with Transnational Crime ... (Economic and Social Council resolution 1992/23, annex I), subpara. 7 (c).

[19]Discussion guide for the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (A/CONF.169/PM.1 and Corr.1), para. 43.

[20]Nadelmann, op. cit., p. 468.

[21]Recommendations of the Ad Hoc Expert Group Meeting on Strategies to Deal with Transnational Crime ... (Economic and Social Council resolution 1992/23, annex I), subpara. 15 (d).

[22]Discussion document on the World Ministerial Conference on Organized Transnational Crime (Economic and Social Council resolution 1994/12, annex), para. 29.

[23]Ibid., para. 21.

[24]Ibid., para. 20.

[25]Recommendations of the Ad Hoc Expert Group Meeting on Strategies to Deal with Transnational Crime ... (Economic and Social Council resolution 1992/23, annex I), subparas. 7 (g) and 7 (o).

[26]Ibid., subparas. 7 (g), 7 (p) and 15 (f).

[27]Discussion document on the World Ministerial Conference on Organized Transnational Crime (Economic and Social Council resolution 1994/12, annex), para. 30.

[28]Recommendations of the Ad Hoc Expert Group Meeting on Strategies to Deal with Transnational Crime ... (Economic and Social Council resolution 1992/23, annex I), subpara. 7 (g).

[29]Discussion guide for the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (A/CONF.169/PM.1 and Corr.1), para. 44.

[30]See the report of the Secretary-General on the status of preparation for the World Ministerial Conference on Organized Transnational Crime (E/CN.15/1994/4), para. 23.

[31]Conclusions and recommendations of the meeting of the Ad Hoc Expert Group on Managing the Risk of Violence in a Criminal Justice System: a Framework of Analysis, held at Chicago, United States of America, from 18 to 20 August 1993 (E/CN.15/1994/4/Add.3, annex), para. 7.

[32]Recommendations of the Ad Hoc Expert Group Meeting on Strategies to Deal with Transnational Crime ... (Economic and Social Council resolution 1992/23, annex I), subpara. 7 (c).

[33]Report on the meeting of the Ad Hoc Expert Group on Implementing Legislation to Foster Reliance on Model Treaties, held at Vienna from 18 to 21 October 1993 (see E/CN.15/1994/4/Add.1, annex), sect. II, paras. 9-26.

[34]Richard A. Martin, "Problems in international law enforcement", Fordham International Law Journal, vol. 14, No. 3 (1990-1991), pp. 519-539.

[35]Recommendations of the Ad Hoc Expert Group Meeting on Strategies to Deal with Transnational Crime ... (Economic and Social Council resolution 1992/23, annex I), subpara. 7 (e).

[36]See European Convention on Extradition (European Treaty Series, No. 24) and its First and Second Additional Protocols (European Treaty Series, Nos. 86 and 89).

[37]"European Convention on the Transfer of Proceedings in Criminal Matters" (European Treaty Series, No. 73).

[38]Nadelmann, op. cit., p. 313.

[39]Ibid., p. 14.

[40]Ibid., p. 317.

[41]Ibid., p. 319.

[42]"US-Swiss MLAT yields $150 million seizure in Swiss bank", Money Laundering Alert, vol. 5, No. 8 (May 1994), p. 3.

[43]Nadelmann, op. cit., p. 377.

[44]For example, the European Convention on Mutual Assistance in Criminal Matters and its additional protocol (European Treaty Series, Nos. 30 and 99); the European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders (European Treaty Series, No. 51); the European Convention on the International Validity of Criminal Judgments (European Treaty Series, No. 70); and the European Convention on the Transfer of Sentenced Persons, on 21 March 1983 (European Treaty Series, No. 112).

[45]Report of the Secretary-General on Technical cooperation and advisory services of the United Nations crime prevention and criminal justice programme, including appropriate mechanisms for the mobilization of resources (E/CN.15/1994/6), paras. 21 and 22.